IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.861 OF 2006

Mr.Ajay Kumar Padiya .. Petitioner.
Vs.
The State of Maharashtra .. Respondent.

Mr.M.S.Mohite for the petitioner.
Mrs.M.H.Mhatre A.P.P. for the State.

CORAM : D.B.BHOSALE, J.
DATED : 27TH JULY, 2006

P.C.:

. Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. In this petition, the petitioner has prayed for quashing and setting aside the order dated 15.3.2005 passed by the learned Magistrate on Miscellaneous Application No.257/2000 and further seeking restoration of the said application. The petitioner had filed private complaint against four accused named in the complaint under section 120(B), 406, 411, 414, 379, 387, 463, 465, 467, 471, 468, 474, 506(2) read with 34 of I.P.C. In pursuance of the order dated 2nd December, 2000 offence under the aforesaid provisions came to be registered by Swargate police station against all the four accused. It appears that the accused had challenged the order dated 2nd December, 2000 by way of revision before the Sessions Court and during the pendency of the said

revision, the said order was stayed by the Sessions Court. The revision, however, came to be dismissed on 3rd March, 2003. Thereafter the police set the investigation in motion and ultimately filed summary report before the learned Sessions Judge on 2nd May, 2006. I am informed that no orders are passed on the report so far. The learned Judge has not passed the order on the report probably in view of the fact that he had already dismissed the complaint bearing No.257/2000 by the impugned order dated 15.3.2005. It is clear from the facts aforestated that the order dated 15.3.2005 was passed in haste and the Magistrate ought to have found out as to what happended after the order dated 2nd December, 2000. After that order there was no question of the complainant to remain present before the Magistrate since it was responsibility of the investigating officer to either file report under section 173 or summary report which in fact came to be filed in May 2006. In the circumstances the order impugned is set aside. Miscellaneous application No.257 of 2000 stands restored to file. The learned Magistrate shall pass an order on summary report filed by the police after giving an opportunity of being heard to the petitioner.

. The writ petition is, accordingly, disposed of.

(D.B.Bhosale, J.)